

## DEPARTMENT OF THE ARMY PERMIT

**Permittee:** Vigo Sunna, LLC

**Permit Number:** LRL-2011-1055-sew

**Issuing Office:** U.S. Army Engineer District, Louisville

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** The project would result in the discharge of fill and/or dredged material into "waters of the United States" on a majority of a 1498-acre site. This permit specifically authorizes discharges to 60,015 linear feet of ephemeral streams, 27,297 linear feet of intermittent streams, 1.588 acres of palustrine forested (PFO) wetlands, 0.816 acre of palustrine scrub/shrub (PSS) wetlands, 4.525 acres of palustrine emergent (PEM) wetlands, and 28.046 acres of open waters. All economically recoverable coal would be removed during the excavation of the area, processed, and sold. The area would be returned to approximate original contours, covered with stockpiled soil material, revegetated, and returned to an approved post-mine land use through the SMCRA process.

To mitigate the proposed impacts to "waters of the U.S.", the applicant has proposed on-site mitigation. Ephemeral streams would be mitigated at a 0.51:1 ratio, resulting in the construction of 27,652 linear feet of stream. Intermittent streams would be constructed at nearly a 1.53:1 ratio, resulting in the construction of 43,611 linear feet of stream. Stream construction would be conducted concurrently with the reclamation phase of the project. Streams would be integrated within constructed valleys having characteristics corresponding to the appropriate stream types. Valley morphology would consist of landform features that would correspond to the proposed stream system morphology including meander planform (radius of curvature, wavelength, belt width, and sinuosity), channel profile morphology (riffle/pool or step/pool bed features) and cross section dimensions (low flow, bankfull, and flood prone). A 25-foot forested riparian buffer would be constructed along each side of ephemeral streams, providing a 50-foot wide riparian corridor along the entire length of the constructed ephemeral streams. For intermittent streams, a 50-foot wide forested riparian buffer would be constructed along each side of the mitigated streams, resulting in a 100-foot wide riparian corridor along all intermittent stream mitigation. The mitigation plan also addresses the control of invasive and exotic plant species.

The applicant shall conduct biannual inspections of the mitigation streams, submitting monitoring reports to the Corps on an annual basis. These monitoring reports would include a discussion of inspection findings, documenting conditions such as bank erosion, streambed characteristics, vegetation survival, and exotic and/or invasive species issues. Also as part of monitoring the applicant would utilize the U.S. Environmental Protection Agency's (USEPA) Rapid Bioassessment Protocol for Use in Wadable Streams and Rivers (RBP)(1999) to evaluate the quality of the mitigated streams in comparison to the impacted streams. The applicant shall achieve an overall mean RBP score equal to or greater than 115. These scores will be achieved through the incorporation of natural stream channel design techniques throughout the mitigation construction process. Furthermore, each stream would be constructed to appropriately fit the post-mining geomorphic landscape, and as noted above, forested riparian corridors would be planted along the entire length of each mitigation stream length. The applicant shall also conduct annual fish and macroinvertebrate sampling on the mitigation streams, and shall provide this information, along with a summary of water quality monitoring results as part of their annual monitoring reports.

Wetland mitigation would also be conducted on-site. The PFO, PSS, and PEM wetlands would be mitigated at 3:1, 2:1, and 1:1 ratios respectively, for a total of 11.3 acres. The applicant has proposed all 11.3 acres of wetlands to be PFO type at three separate on-site locations. Wetlands shall be constructed during the reclamation phase of mining. The wetlands would receive

hydrologic input from rainfall, overbank flow from proposed streams, and watershed runoff. The forested planting zone would cover at least 11.3 acres and would be planted in native hard mast trees suitable for life adapted to a wetland environment and a native herbaceous mix. A successful implementation of the plan should exhibit a trend toward a forested classification by the end of the monitoring period.

The applicant shall conduct biannual inspections of the mitigation sites, submitting monitoring reports to the Corps on an annual basis. These monitoring reports would include a discussion of inspection findings, documenting conditions such as soil characteristics, hydrology and vegetation survival. Groundwater monitoring wells shall be installed to measure and document soil saturation conditions. At the end of the mitigation monitoring period, the applicant will use the Cowardin Classification to evaluate overall success of the wetlands. Wetland hydrology would be achieved through the measurement of 14 or more consecutive days of saturation, flooding or ponding, or a water table 12 inches or less below the soils surface, during the growing season at a minimum frequency of 5 years in 10 as stated in the USACE Regional Supplement.

**Project Location:** The project is located in unnamed tributaries and adjacent wetlands and open waters to Cup Creek and Houchin Ditch, in Pike County, Indiana.

**LATITUDE & LONGITUDE:** Latitude: 38.28972° North  
Longitude: -87.15417° West  
7.5 Minute Quad: Augusta, Indiana

**Permit Conditions:**

**General Conditions:**

1. The time limit for completing the authorized activity ends on December 31, 2024. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification from this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

**Special Conditions:**

- a. The permittee shall adhere to the Mitigation Plan for Stream Impacts dated October 28, 2011 (revised April 14, 2014) and

the Mitigation Plan for Wetland Impacts dated October 28, 2011 (revised April 8, 2014). Any modification to the mitigation plans or proposed mitigation locations is required to be submitted to this office prior to construction. Within 6 months of completion of the mitigation construction, as-built plans documenting the final conditions of the streams and wetlands shall be submitted to this office for review and approval.

b. All of the mitigation shall be protected in perpetuity by having the respective property owner(s) on whose property the mitigation property is located execute a completed DECLARATION OF RESTRICTIVE COVENANTS, which shall be in the same form and contain the same terms as the DECLARATION OF RESTRICTIVE COVENANTS contained in the application/mitigation plan. Within 60 days of mitigation construction completion per tract, a final draft of the DECLARATION OF RESTRICTIVE COVENANTS and its' exhibits must be provided to and approved by the Corps of Engineers, Louisville District. The permittee shall ensure that the approved DECLARATION OF RESTRICTIVE COVENANTS is recorded with the property deed on all onsite mitigation sites, within 60 days of Corps approval.

In the event the permittee fails to provide a DECLARATION OF RESTRICTIVE COVENANTS that assures long term protection of the mitigation property or fails to ensure that the approved DECLARATION OF RESTRICTIVE COVENANTS is properly executed and recorded, the permittee shall provide alternative mitigation acceptable to this office within ninety (90) days of notice of such failure from this office.

c. The permittee's responsibility to complete the required compensatory mitigation proposal in Special Conditions "a thru b" above shall not be considered fulfilled until mitigation success has been demonstrated and written verification is received from the U. S. Army Corps of Engineers.

d. To meet the requirements of the Endangered Species Act and to avoid harm to the Federally listed Indiana bat, the permittee shall avoid tree clearing activities during the summer reproductive season (April 1 – September 30).

**Further Information:**

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X ) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

John Charman  
(PERMITTEE)

August 19, 2014  
(DATE)

Christopher G. Beck  
Colonel, Corps of Engineers  
Commanding

8/20/2014  
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)

